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**SUBSTITUTE HOUSE BILL 2367**

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**State of Washington**

**57th Legislature**

**2002 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Lantz, Ballasiotes, Cody, McDermott, Voloria, Lysen, Darneille, Dickerson, Linville, Lovick, Edwards, Kagi and Kenney)

Read first time 02/08/2002. Referred to Committee on .

1 AN ACT Relating to advance directives for mental health treatment;  
2 amending RCW 11.94.010, 11.88.010, 11.88.030, and 7.70.065; adding a  
3 new chapter to Title 71 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature declares that a person has  
6 the ability to control decisions relating to his or her own mental  
7 health care even when the person's ability to declare his or her  
8 choices is impaired due to mental illness. The legislature recognizes  
9 that an advance directive can be an essential tool for a person to  
10 express his or her choices before the effects of mental illness deprive  
11 the person of the power to express his or her instructions and  
12 preferences for mental health treatment. The legislature affirms that,  
13 pursuant to other provisions of law, a mental health advance directive  
14 created under this chapter should be respected by medical and mental  
15 health professionals, guardians, attorneys-in-fact, and other surrogate  
16 decision makers acting on behalf of the person who created it.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply  
18 throughout this chapter unless the context clearly requires otherwise.

1 (1) "Adult" means any person who has attained the age of majority  
2 as defined in RCW 26.28.010 or an emancipated minor.

3 (2) "Agent" means an attorney-in-fact or agent as provided in  
4 chapter 11.94 RCW.

5 (3) "Incapacitated person" means a person who is not a person with  
6 capacity and who has been found to have a demonstrated inability to  
7 provide for essential health or mental health care needs.

8 (4) "Mental disorder" has the meaning given in RCW 71.05.020.

9 (5) "Mental health advance directive" or "directive" means a  
10 written document in which the person makes a declaration of  
11 instructions or preferences or appoints an agent to make decisions on  
12 behalf of the person regarding the person's mental health treatment and  
13 that is consistent with the provisions of this chapter.

14 (6) "Mental health professional" has the meaning given in RCW  
15 71.05.020.

16 (7) "Person with capacity" means an adult who has the ability to  
17 understand the significance of a directive or its revocation and who  
18 acts free from fraud and undue influence, and who has not been declared  
19 incapacitated under RCW 11.88.010.

20 (8) "Professional person" has the meaning given in RCW 71.05.020.

21 (9) "Psychiatrist" has the meaning given in RCW 71.05.020.

22 NEW SECTION. **Sec. 3.** (1) For the purposes of this chapter, an  
23 adult is presumed to be a person with capacity. A person who has been  
24 declared an incapacitated person may subsequently reassert his or her  
25 capacity and it shall be presumed that the person has regained capacity  
26 until he or she is declared otherwise.

27 (2) For the purposes of this chapter, no adult may be declared an  
28 incapacitated person except by: (a) Court order; or (b) the opinion of  
29 two mental health professionals, at least one of whom is a  
30 psychiatrist.

31 (3) Where a court order has stated that the person is a person with  
32 capacity and there is a subsequent change in the person's condition,  
33 subsequent determinations whether the person is incapacitated may be  
34 made by a court order or by the opinion of two mental health  
35 professionals, at least one of whom is a psychiatrist.

36 NEW SECTION. **Sec. 4.** (1) A person with capacity may create a  
37 directive.

1 (2) A directive may include any provision relating to mental health  
2 treatment or the care of the person or the person's personal affairs.  
3 Without limitation, a directive may include:

4 (a) The person's preferences and instructions for mental health  
5 treatment;

6 (b) Consent to specific types of mental health treatment;

7 (c) Refusal to consent to specific types of mental health  
8 treatment;

9 (d) Consent to admission to and retention in a facility for mental  
10 health treatment;

11 (e) Descriptions of situations that may cause the person to  
12 experience a mental health crisis;

13 (f) Suggested alternative responses that may supplement or be in  
14 lieu of direct mental health treatment, such as treatment approaches  
15 from other providers;

16 (g) Appointment of an agent to make mental health treatment  
17 decisions on the person's behalf, including authorizing the agent to  
18 provide consent on the person's behalf to voluntary admission to  
19 inpatient mental health treatment consistent with section 7 of this  
20 act;

21 (h) Consent to have the person's health care information released  
22 to other providers or third parties; and

23 (i) The person's nomination of a guardian or limited guardian for  
24 consideration by the court if guardianship proceedings are commenced.

25 (3)(a) A directive may be combined with or be independent of the  
26 power of attorney authorized in chapter 11.94 RCW or guardianship  
27 authorized in chapter 11.92 RCW, so long as the processes for each are  
28 executed in accordance with its own statutes. If a directive  
29 authorizes the appointment of an agent, the provisions of chapter 11.94  
30 RCW and RCW 7.70.065 shall apply unless otherwise stated in this  
31 chapter.

32 (b) Unless provided otherwise in either document, the directive or  
33 power of attorney most recently created shall control as to any  
34 inconsistent mental health treatment provisions.

35 (c) When a directive created under this chapter is inconsistent  
36 with a directive created under chapter 70.122 RCW, the most recently  
37 created directive shall control as to any inconsistent provisions.

38 NEW SECTION. **Sec. 5.** (1) A directive shall:

- 1 (a) Be in writing;
- 2 (b) Contain language that clearly indicates that the person intends  
3 to create a directive;
- 4 (c) Be dated and signed by the person; and
- 5 (d) Be witnessed in writing by at least two adults, each of whom  
6 shall certify that he or she personally knows the person, was present  
7 when the person dated and signed the directive, and that the person  
8 appeared to be a person with capacity.

9 (2) A witness may not be any of the following:

10 (a) A person designated to make health care decisions on the  
11 person's behalf;

12 (b) A professional person directly involved with caring for the  
13 person at the time the directive is executed;

14 (c) An owner, operator, or relative of an owner or operator, or  
15 employee of a health care facility or long-term care facility in which  
16 the person is a patient or resident;

17 (d) A person who is related by blood, marriage, or adoption to the  
18 person; or

19 (e) A person who is declared to be an incapacitated person.

20 (3) A directive executed in accordance with this section is  
21 presumed to be valid.

22 (4) A directive may:

23 (a) Become operative immediately or at a later time as designated  
24 in the directive;

25 (b) Be revoked, in whole or in part, by the person who created it;

26 (c) Be revoked, in whole or in part expressly or to the extent of  
27 any inconsistency, by a subsequent directive;

28 (d) Expire under its own terms;

29 (e) Be superseded or revoked by a court order. To the extent a  
30 directive is not in conflict with a court order, the directive remains  
31 effective.

32 (5) A directive that would have otherwise expired but is operative  
33 because the person is an incapacitated person remains operative until  
34 the person is no longer an incapacitated person.

35 NEW SECTION. **Sec. 6.** (1)(a) Upon receiving a directive, a  
36 professional person, or his or her designee, treating the person shall  
37 make the directive a part of the person's medical record and shall be  
38 deemed to have actual knowledge of its contents. Whenever possible,

1 the professional person, or his or her designee, shall inform the  
2 person or the person's agent if he or she may be precluded from  
3 honoring all or part of the directive based on the reasons in  
4 subsection (3) of this section.

5 (b) If no physician-patient relationship has previously been  
6 established, nothing in this statute requires the establishment of a  
7 physician-patient relationship.

8 (2) In the absence of actual notice to the contrary, a professional  
9 person shall presume that a person who created a directive was a person  
10 with capacity at the time the directive was created and that the  
11 directive is valid.

12 (3) Subject to subsections (6) and (7) of this section, a  
13 professional person who has been presented with or has obtained a  
14 person's directive and who is treating the person shall act in  
15 accordance with the provisions of the directive to the fullest extent  
16 possible, consistent with applicable law. If the professional person  
17 is at any time unable to comply, the professional person shall offer to  
18 withdraw from treating the person, unless no other treatment provider  
19 is reasonably available.

20 (4) If the directive authorizes the appointment of an agent, the  
21 agent has the same right as the person to receive and review the  
22 person's health care information, including records and information  
23 pertaining to the person's mental health and alcohol or substance abuse  
24 or dependency information. If the person consents in the directive to  
25 having his or her health care information released to other providers  
26 or third parties, the professional person's disclosure of health care  
27 information shall not be a violation of chapter 70.02 RCW or any other  
28 applicable law governing the disclosure of health care information.

29 (5) To the extent the person has not waived the right to informed  
30 consent and except as provided in chapter 71.05 RCW, the professional  
31 person shall attempt to obtain the person's informed consent regarding  
32 all mental health treatment decisions. Treatment under chapters 71.05  
33 and 71.34 RCW shall be provided pursuant to the provisions of those  
34 chapters, notwithstanding the requirement for informed consent under  
35 this subsection.

36 (6) A professional person who is treating a person involuntarily  
37 detained under chapter 71.05 or 71.34 RCW shall act in accordance with  
38 the provisions of the person's directive to the fullest extent possible  
39 and as permitted by the applicable involuntary detention laws,

1 consistent with reasonable medical practice and the availability of  
2 treatment.

3 (7)(a) A professional person may decline to follow a provision that  
4 requires health care contrary to generally accepted health care  
5 standards applicable to the professional person, or that requires  
6 treatment that is not available despite reasonable efforts.

7 (b) The professional person may provide treatment that is  
8 inconsistent with specific preferences or instructions in the directive  
9 if the directive authorizes the professional person to use his or her  
10 best medical judgment in cases of emergencies, provided the treatment  
11 is in compliance with the laws governing the facility treating the  
12 person.

13 (8)(a) A private or public agency, government entity, or  
14 professional person, or personnel acting under the direction of a  
15 professional person, or any health care facility or long-term care  
16 facility is not subject to civil liability for failure to act in  
17 accordance with a directive if that person does not have actual  
18 knowledge of the directive.

19 (b) A private or public agency, government entity, or professional  
20 person, or personnel acting under the direction of a professional  
21 person, or any health care facility or long-term care facility is not  
22 subject to civil liability for providing, in good faith, mental health  
23 treatment to a person in accordance with the person's directive.

24 NEW SECTION. **Sec. 7.** (1) If a person consents in the directive,  
25 or authorizes an agent to consent on the person's behalf, to voluntary  
26 admission to inpatient mental health treatment, the admission may not  
27 exceed seventy-two hours, including weekends. If, after the seventy-  
28 two hour period, the person does not consent to remain for additional  
29 treatment, the patient must be released during reasonable daylight  
30 hours following the expiration of the seventy-two hours.

31 (2) If a person consents in the directive, or authorizes the agent  
32 to consent on the person's behalf, to voluntary admission to inpatient  
33 mental health treatment and the person subsequently refuses, orally or  
34 in writing, to be admitted, the refusal shall constitute a revocation  
35 of that provision of the directive and any admission to inpatient  
36 mental health treatment may only be imposed pursuant to chapter 71.05  
37 RCW.

1 (3) Nothing in this chapter authorizes an agent to use or threaten  
2 physical force, abuse, neglect, financial exploitation, or abandonment  
3 of the person, as those terms are defined in RCW 74.34.020, to enforce  
4 or carry out a person's directive.

5 (4) Any person who is voluntarily admitted to inpatient mental  
6 health treatment under this chapter, or who consents to remain for  
7 additional treatment after the initial seventy-two hour period, shall  
8 have no less than all the rights provided to individuals who are  
9 voluntarily admitted to inpatient treatment under chapter 71.05 or  
10 72.23 RCW. The continuing need for treatment of a person who consents  
11 to remain for additional treatment under this chapter shall be reviewed  
12 by the treating facility, and the person's agent if any, at least as  
13 frequently as set forth for voluntary patients under chapter 71.05 or  
14 72.23 RCW.

15 NEW SECTION. **Sec. 8.** (1) Except as provided in section 7(2) of  
16 this act, a person with capacity may revoke a directive in whole or in  
17 part by written statement at any time. The written statement of  
18 revocation is effective when signed by the person and it is delivered  
19 to the agent, if one is appointed, and the professional person who is  
20 responsible for the delivery of mental health treatment to the person.  
21 The professional person shall make the revocation part of the person's  
22 medical record.

23 (2)(a) If an agent or professional person believes that the person  
24 seeking to revoke all or part of the directive does not have capacity  
25 to revoke, the agent or professional person may seek a determination of  
26 the person's capacity within forty-eight hours of the attempted  
27 revocation.

28 (b) If a court or two mental health professionals, one of whom is  
29 a psychiatrist, find that it is more likely than not that the person  
30 did not have the capacity to revoke, then the attempted revocation is  
31 invalid. If the court or two mental health professionals, one of whom  
32 is a psychiatrist, find that it is more likely than not that the person  
33 had the capacity to revoke the directive, the revocation is valid. If  
34 a court is making the determination, the court shall, at a minimum, be  
35 informed by the declaration of one mental health professional familiar  
36 with the person and shall, except for good cause, give the alleged  
37 incapacitated person an opportunity to appear in court prior to the  
38 court making its determination. If a determination of the person's

1 capacity to revoke has not been made within forty-eight hours of the  
2 time the agent or professional person seeks a determination, then it is  
3 presumed that the person had the capacity to revoke the directive.

4 (3) A person declared under this chapter to be an incapacitated  
5 person by a court or two mental health professionals, one of whom is a  
6 psychiatrist, may not revoke a directive. If an incapacitated person  
7 seeks to revoke all or part of the directive, the agent or professional  
8 person may seek a determination of the person's capacity to revoke  
9 within forty-eight hours of the attempted revocation. If a  
10 determination of the person's capacity to revoke has not been made  
11 within forty-eight hours of the time the agent or professional person  
12 seeks a determination, then it is presumed that the incapacitated  
13 person had the capacity to revoke the directive.

14 (4) A private or public agency, government entity, or professional  
15 person, or personnel acting under the direction of a professional  
16 person, or any health care facility or long-term care facility  
17 participating in good faith in the mental health treatment of a person  
18 is not civilly liable for failing to follow or act upon a revocation if  
19 there was no actual knowledge of the revocation.

20 NEW SECTION. **Sec. 9.** Any person with good reason to believe that  
21 a directive has been created or revoked under circumstances amounting  
22 to falsification, forgery, or coercion may petition the court for  
23 review under RCW 11.94.090 or 74.34.110 or for the appointment of a  
24 guardian for the person.

25 NEW SECTION. **Sec. 10.** The fact that a person has executed a  
26 directive does not constitute an indication of mental disorder or that  
27 the person is not capable of providing informed consent.

28 NEW SECTION. **Sec. 11.** A person shall not be required to execute  
29 or to refrain from executing a directive as a criterion for insurance,  
30 as a condition for receiving mental or physical health services, or as  
31 a condition of admission or discharge from a health care facility or  
32 long-term care facility.

33 NEW SECTION. **Sec. 12.** A directive does not limit any authority  
34 otherwise provided in Title 71 or 10 RCW, or any other applicable state

1 or federal laws to take a person into custody or to admit, retain, or  
2 treat a person in a health care facility.

3 NEW SECTION. **Sec. 13.** The directive may, but is not required to,  
4 be in the following form:

5 **"PART I. STATEMENT OF INTENT TO CREATE A MENTAL HEALTH ADVANCE**  
6 **DIRECTIVE**

7 I, . . . . ., being a person with capacity, willfully and voluntarily  
8 execute this mental health advance directive so that my choices  
9 regarding my mental health care will be carried out either when I am  
10 declared an incapacitated person or when I specify in this directive.  
11 If a guardian or other decision maker is appointed by a court to make  
12 mental health decisions for me, I intend this document to take  
13 precedence over all other means of ascertaining my intent.

14 The fact that I may have left blanks in this mental health advance  
15 directive should not affect its validity in any way. I intend that all  
16 completed sections be followed. If I have not expressed a choice, my  
17 agent should make the decision that he or she determines is the  
18 decision I would make if I were capable to do so.

19 I intend this mental health care advance directive to take precedence  
20 over any and all durable power of attorney for health care documents  
21 and/or other advance directives I have previously executed, to the  
22 extent that they are inconsistent with this document, or unless I  
23 expressly state otherwise in this directive.

24 If I want to revoke all or part of this mental health advance  
25 directive, I must do so by written statement unless otherwise provided  
26 by law. I understand that I may revoke this advance directive only if  
27 I am a person with capacity, and I cannot revoke this directive during  
28 the period that a court or two mental health professionals, at least  
29 one being a psychiatrist, find that I am an incapacitated person.

30 I understand that if I refuse a treatment that I have said I wanted in  
31 this directive, I am not authorizing my agent to use or threaten  
32 physical force, abuse, neglect, financial exploitation, or abandonment  
33 of me to enforce or carry out my directive.

1 **PART II. STATEMENT OF INTENT REGARDING WHEN THIS DIRECTIVE BECOMES**  
2 **OPERATIVE**

3 I intend that this directive become operative (check only one):

4 . . . Immediately upon my signing of this directive

5 . . . When the following circumstances, symptoms, or behaviors occur:

6 . . . . .

7 . . . If I become incapacitated.

8 **PART III. STATEMENT OF INTENT REGARDING PREFERENCES OR INSTRUCTIONS**  
9 **ABOUT TREATMENT, FACILITIES, AND PHYSICIANS**

10 A. Preferences or Instructions About Physician(s) to Be Involved in My  
11 Treatment

12 I would like the physician named below to be involved in my treatment  
13 decisions: Dr. . . . . Telephone . . . . .

14 I do not wish to be treated by: . . . . .

15 B. Preferences or Instructions About Other Providers

16 I am receiving other treatment or care from providers who I feel have  
17 an impact on my mental health care. I would like the following  
18 additional service provider(s) to be contacted when this directive is  
19 operative:

20 Name . . . . . Profession . . . . . Telephone . . . . .

21 C. Preferences or Instructions About Medications for Psychiatric  
22 Treatment

23 . . . I consent, and authorize my agent (if named) to consent, to the  
24 following medications: . . . . .

25 . . . . .

26 . . . I specifically do not consent and I do not authorize my agent (if  
27 named) to consent to the administration of the following medications:

28 . . . . .

29 . . . . .

30 Consideration of Medications Not Listed Above (check one below)

1 . . . I am willing to take the medications excluded above if my only  
2 reason for excluding them is the side effects which include . . . . .  
3 and these side effects can be eliminated by dosage adjustment or other  
4 means.

5 . . . I am willing to try any new medication the hospital doctor  
6 recommends.

7 . . . I am willing to try any new medications my outpatient doctor  
8 recommends.

9 . . . I do not want to try any new medications.

10 Medication Allergies

11 I have allergies to or severe side effects from the following  
12 medications: . . . . .  
13 . . . . .

14 Other Medication Preferences or Instructions

15 I have the following other preferences or instructions about  
16 psychiatric medications: . . . . .  
17 . . . . .  
18 . . . . .

19 D. Preferences or Instructions About Hospitalization and Alternatives

20 . . . (check if desired) In the event my psychiatric condition is  
21 serious enough to require 24-hour care and I have no physical  
22 conditions that require immediate access to emergency medical care, I  
23 would prefer to receive this care in programs/facilities designed as  
24 alternatives to psychiatric hospitalizations.

25 I would also like the interventions below to be tried, before  
26 hospitalization is considered (check all that apply):

- 27 . . . Calling someone or having someone call you when needed
- 28 . . . Staying overnight with someone Name: . . . Telephone: . . .
- 29 . . . Having a mental health service provider come to see you
- 30 . . . Going to a crisis triage center or emergency room
- 31 . . . Staying overnight at a crisis respite (temporary) bed
- 32 . . . Seeing a service provider for help with psychiatric medications
- 33 . . . Other, specify . . . . .

1 Authority to Consent to Inpatient Treatment

2 I consent, and authorize my agent (if named) to consent, to voluntary  
3 admission to inpatient mental health treatment for a period not to  
4 exceed 72 hours (check one if desired):

5 . . . If deemed appropriate by my agent (if named) and treating  
6 physician

7 . . . Under the following circumstances (specify symptoms, behaviors,  
8 or circumstances that indicate the need for hospitalization)

9 . . . . .

10 Hospital Preferences or Instructions

11 If hospitalization is required, I prefer the following hospitals:

12 . . . . .

13 I do not wish to be admitted to the following hospitals:

14 . . . . .

15 E. Preferences or Instructions About Pre-Emergency Interventions

16 I would like the interventions below to be tried before use of  
17 seclusion is considered (check all that apply):

18 . . . "Talk me down" one-on-one

19 . . . More medication

20 . . . Time out/privacy

21 . . . Show of authority/force

22 . . . Shift my attention to something else

23 . . . Set firm limits

24 . . . Help me to discuss/vent feelings

25 . . . Decrease stimulation

26 . . . Offer to have neutral person settle dispute

27 . . . Other, specify . . . . .

28 F. Preferences or Instructions About Seclusion and Emergency  
29 Medications

30 If it is determined that I am engaging in behavior that requires  
31 seclusion or emergency use of medication, I prefer these interventions  
32 in the following order (rank "1" for first choice, "2" for second  
33 choice, and so on):

- 1 . . . Seclusion
- 2 . . . Medication by injection
- 3 . . . Medication in pill or liquid form
- 4 . . . Other . . . . .

5 In the event that my attending physician decides to use medication in  
 6 response to an emergency situation after due consideration of my  
 7 preferences or instructions for emergency treatments stated above, I  
 8 expect the choice of medication to reflect any preferences or  
 9 instructions I have expressed in Part III C of this form. The  
 10 preferences or instructions I express in this section regarding  
 11 medication in emergency situations do not constitute consent to use of  
 12 the medication for nonemergency treatment.

13 G. Additional Instructions About My Mental Health Care

14 Other instructions about my mental health care: . . . . .  
 15 . . . . .

16 **PART IV. STATEMENT OF INTENT TO APPOINT AN AGENT**

17 I, . . . . ., authorize an agent to make mental health treatment  
 18 decisions on my behalf. The authority granted to my agent includes the  
 19 right to consent, refuse consent, or withdraw consent to any mental  
 20 health care, treatment, service, or procedure, consistent with any  
 21 instructions and/or limitations I have set forth in this advance  
 22 directive. I intend that those decisions should be made in accordance  
 23 with my expressed wishes as set forth in this document. If I have not  
 24 expressed a choice in this document, I authorize my agent to make the  
 25 decision that my agent determines is the decision I would make if I  
 26 were capable to do so.

27 A. Designation of an Agent

28 I hereby appoint the following person as my agent to make mental health  
 29 care decisions for me as authorized in this document and desire for  
 30 this person to be notified immediately when this directive becomes  
 31 operative:

32 Name: . . . . . Relationship: . . . . .  
 33 Address: . . . . .  
 34 Day Telephone: . . . . . Evening Telephone: . . . . .

1 Agent's Acceptance

2 I hereby accept the designation as the agent for purposes described in  
3 this document (agent's signature) . . . . .

4 B. Designation of Alternate Agent

5 If the person named above is unavailable or unable to serve as my  
6 agent, I hereby appoint the following person as my alternate agent and  
7 desire for this person to be notified immediately when this directive  
8 becomes operative:

9 Name: . . . . . Relationship: . . . . .  
10 Address: . . . . .  
11 Day Telephone: . . . . . Evening Telephone: . . . . .

12 Alternate Agent's Acceptance

13 I hereby accept the designation as the alternate agent for purposes  
14 described in this document (alternate's signature) . . . . .

15 C. When My Spouse is My Agent (check if desired)

16 . . . If my spouse is my agent, I desire that person to remain as my  
17 agent even if we become legally separated or our marriage is dissolved.

18 D. Limitations on My Agent's Authority

19 I do not grant my agent the authority to consent on my behalf to the  
20 following: . . . . .

21 E. Preference as to Court-Appointed Guardian

22 In the event a court decides to appoint a guardian who will make  
23 decisions regarding my mental health treatment, I desire the following  
24 person to be appointed:

25 Name: . . . . . Relationship: . . . . .  
26 Address: . . . . .  
27 Day Telephone: . . . . . Evening Telephone: . . . . .

28 The appointment of a guardian of my estate or my person or any other  
29 decision maker shall not give the guardian or decision maker the power  
30 to revoke, suspend, or terminate this directive or the powers of my  
31 agent, except as specifically required by law.

1 **PART V. PREFERENCES OR INSTRUCTIONS ABOUT NOTIFICATION OF OTHERS, CARE**  
2 **OF PERSONAL AFFAIRS, AND CONSENTS TO RELEASE TREATMENT INFORMATION**

3 A. Who Should Be Notified

4 I desire staff to notify the following individuals, in addition to my  
5 agent (if named) immediately when this directive becomes operative:

6 Name: . . . . . Relationship: . . . . .  
7 Address: . . . . .  
8 Day Telephone: . . . . . Evening Telephone: . . . . .

9 B. Who Should Not be Permitted to Visit

10 If I have been admitted to a mental health treatment facility, I do not  
11 wish the following people to be permitted to visit me there:

12 Name: . . . . . Relationship: . . . . .

13 C. Consents to Obtain Previous Treatment Records

14 I consent to release treatment records from the following previous  
15 treatment providers upon request by treatment providers acting under  
16 this mental health advance directive:

17 Provider(s): . . . . .

18 D. Consents to Release Treatment Information

19 I consent to release relevant treatment information to the following  
20 individuals in addition to my agent and current treatment providers:

21 Name: . . . . . Relationship: . . . . .  
22 Address: . . . . .  
23 Day Telephone: . . . . . Evening Telephone: . . . . .

24 E. Preferences or Instructions About Personal Affairs

25 I have the following preferences or instructions about my personal  
26 affairs (e.g., care of dependents, pets, household) if I am admitted to  
27 a mental health treatment facility: . . . . .

28 **PART VI. DURATION OF MY MENTAL HEALTH ADVANCE DIRECTIVE**

29 . . . I want this mental health advance directive to remain valid and  
30 in effect for an indefinite period of time.

1 . . . I want this mental health advance directive to automatically  
2 expire within . . . years from the date it was created.

3 **PART VII. SIGNATURE**

4 By signing here, I indicate that I understand the purpose and effect of  
5 this document.

6 . . . . .  
7 Signature Date

8 The directive above was signed and declared by the "Declarant,"  
9 . . . . . to be his or her mental health advance directive, in our  
10 presence who, at his or her request, have signed names below as  
11 witness. We declare that, at the time of the creation of this  
12 instrument, the Declarant is personally known to us, and, according to  
13 our best knowledge and belief, was a person with capacity at the time.  
14 We further declare that none of us is: (1) A person designated to make  
15 medical decisions on the person's behalf; (2) a mental health  
16 professional or other professional person directly involved with the  
17 provision of care to the person at the time the mental health advance  
18 directive is executed; (3) an owner, operator, or relative of an owner  
19 or operator, or employee of a health care facility or long-term care  
20 facility in which the person is a patient or resident; (4) a person who  
21 is related by blood, marriage, or adoption to the person; or (5) an  
22 incapacitated person.

23 Dated at . . . . . (county, state),  
24 this . . . . . day of . . . . . of . . . . .

25 Witness 1 Witness 2  
26 . . . . . . . . . . .  
27 Signature Signature  
28 . . . . . . . . . . .  
29 Printed Name Printed Name  
30 . . . . . . . . . . .  
31 . . . . . . . . . . .  
32 Address Address

33 **PART VIII. RECORD OF ADVANCE DIRECTIVE**

1 I have given a copy of this mental health advance directive to the  
2 following persons: . . . . .

3 **PART IX. REVOCATION OF MY ADVANCE DIRECTIVE**

4 . . . I am revoking the following part(s) of this directive (specify):  
5 . . . . .

6 . . . I am revoking all of this directive.

7 By signing here, I indicate that I understand the purpose and effect of  
8 my revocation.

9 . . . . .

10 Signature \_\_\_\_\_ Date" \_\_\_\_\_

11 **Sec. 14.** RCW 11.94.010 and 1995 c 297 s 9 are each amended to read  
12 as follows:

13 (1) Whenever a principal designates another as his or her attorney  
14 in fact or agent, by a power of attorney in writing, and the writing  
15 contains the words "This power of attorney shall not be affected by  
16 disability of the principal," or "This power of attorney shall become  
17 effective upon the disability of the principal," or similar words  
18 showing the intent of the principal that the authority conferred shall  
19 be exercisable notwithstanding the principal's disability, the  
20 authority of the attorney in fact or agent is exercisable on behalf of  
21 the principal as provided notwithstanding later disability or  
22 incapacity of the principal at law or later uncertainty as to whether  
23 the principal is dead or alive. All acts done by the attorney in fact  
24 or agent pursuant to the power during any period of disability or  
25 incompetence or uncertainty as to whether the principal is dead or  
26 alive have the same effect and inure to the benefit of and bind the  
27 principal or the principal's guardian or heirs, devisees, and personal  
28 representative as if the principal were alive, competent, and not  
29 disabled. A principal may nominate, by a durable power of attorney,  
30 the guardian or limited guardian of his or her estate or person for  
31 consideration by the court if protective proceedings for the  
32 principal's person or estate are thereafter commenced. The court shall  
33 make its appointment in accordance with the principal's most recent  
34 nomination in a durable power of attorney except for good cause or  
35 disqualification. If a guardian thereafter is appointed for the

1 principal, the attorney in fact or agent, during the continuance of the  
2 appointment, shall account to the guardian rather than the principal.  
3 The guardian has the same power the principal would have had if the  
4 principal were not disabled or incompetent, to revoke, suspend or  
5 terminate all or any part of the power of attorney or agency.

6 (2) Persons shall place reasonable reliance on any determination of  
7 disability or incompetence as provided in the instrument that specifies  
8 the time and the circumstances under which the power of attorney  
9 document becomes effective.

10 (3)(a) A principal may authorize his or her attorney-in-fact to  
11 provide informed consent for health care decisions on the principal's  
12 behalf. If a principal has created both a power of attorney and a  
13 directive, pursuant to chapter 71.-- RCW (sections 1 through 13 of this  
14 act), authorizing an agent to make mental health care decisions on the  
15 person's behalf, the directive or power of attorney most recently  
16 created shall be construed to contain the person's most recent mental  
17 health treatment preferences and instructions, unless provided  
18 otherwise in either document. An attorney-in-fact appointed under a  
19 mental health advance directive has the same right as the principal to  
20 receive and review the principal's medical records relating to mental  
21 health treatment. If the principal so states in the mental health  
22 advance directive, an attorney-in-fact may provide consent on behalf of  
23 the principal to voluntary admission to inpatient mental health  
24 treatment for a period not to exceed seventy-two hours.

25 (b) Unless he or she is the spouse, or adult child or brother or  
26 sister of the principal, none of the following persons may act as the  
27 attorney-in-fact for the principal or as an agent in a mental health  
28 advance directive: Any of the principal's physicians, the physicians'  
29 employees, or the owners, administrators, or employees of the health  
30 care facility or long-term care facility where the principal resides or  
31 receives care. Except as provided in subsection (a) of this  
32 subsection, this authorization is subject to the same limitations as  
33 those that apply to a guardian under RCW 11.92.043(5) (a) through (c).

34 **Sec. 15.** RCW 11.88.010 and 1991 c 289 s 1 are each amended to read  
35 as follows:

36 (1) The superior court of each county shall have power to appoint  
37 guardians for the persons and/or estates of incapacitated persons, and

1 guardians for the estates of nonresidents of the state who have  
2 property in the county needing care and attention.

3 (a) For purposes of this chapter, a person may be deemed  
4 incapacitated as to person when the superior court determines the  
5 individual has a significant risk of personal harm based upon a  
6 demonstrated inability to adequately provide for nutrition, health,  
7 housing, or physical safety.

8 (b) For purposes of this chapter, a person may be deemed  
9 incapacitated as to the person's estate when the superior court  
10 determines the individual is at significant risk of financial harm  
11 based upon a demonstrated inability to adequately manage property or  
12 financial affairs.

13 (c) A determination of incapacity is a legal not a medical  
14 decision, based upon a demonstration of management insufficiencies over  
15 time in the area of person or estate. Age, eccentricity, poverty, or  
16 medical diagnosis alone shall not be sufficient to justify a finding of  
17 incapacity.

18 (d) A person may also be determined incapacitated if he or she is  
19 under the age of majority as defined in RCW 26.28.010.

20 (e) For purposes of giving informed consent for health care  
21 pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any  
22 person who is (i) incompetent by reason of mental illness,  
23 developmental disability, senility, habitual drunkenness, excessive use  
24 of drugs, or other mental incapacity, of either managing his or her  
25 property or caring for himself or herself, or both, or (ii)  
26 incapacitated as defined in (a), (b), or (d) of this subsection.

27 (f) For purposes of the terms "incompetent," "disabled," or "not  
28 legally competent," as those terms are used in the Revised Code of  
29 Washington to apply to persons incapacitated under this chapter, those  
30 terms shall be interpreted to mean "incapacitated" persons for purposes  
31 of this chapter.

32 (2) The superior court for each county shall have power to appoint  
33 limited guardians for the persons and estates, or either thereof, of  
34 incapacitated persons, who by reason of their incapacity have need for  
35 protection and assistance, but who are capable of managing some of  
36 their personal and financial affairs. After considering all evidence  
37 presented as a result of such investigation, the court shall impose, by  
38 order, only such specific limitations and restrictions on an  
39 incapacitated person to be placed under a limited guardianship as the

1 court finds necessary for such person's protection and assistance. A  
2 person shall not be presumed to be incapacitated nor shall a person  
3 lose any legal rights or suffer any legal disabilities as the result of  
4 being placed under a limited guardianship, except as to those rights  
5 and disabilities specifically set forth in the court order establishing  
6 such a limited guardianship. In addition, the court order shall state  
7 the period of time for which it shall be applicable.

8 (3) Venue for petitions for guardianship or limited guardianship  
9 shall lie in the county wherein the alleged incapacitated person is  
10 domiciled, or if such person resides in a facility supported in whole  
11 or in part by local, state, or federal funding sources, in either the  
12 county where the facility is located, the county of domicile prior to  
13 residence in the supported facility, or the county where a parent or  
14 spouse of the alleged incapacitated person is domiciled.

15 If the alleged incapacitated person's residency has changed within  
16 one year of the filing of the petition, any interested person may move  
17 for a change of venue for any proceedings seeking the appointment of a  
18 guardian or a limited guardian under this chapter to the county of the  
19 alleged incapacitated person's last place of residence of one year or  
20 more. The motion shall be granted when it appears to the court that  
21 such venue would be in the best interests of the alleged incapacitated  
22 person and would promote more complete consideration of all relevant  
23 matters.

24 (4) Under RCW 11.94.010 or chapter 71.-- RCW (sections 1 through 13  
25 of this act), a principal may nominate, by a durable power of attorney  
26 or the mental health advance directive, the guardian or limited  
27 guardian of his or her estate or person for consideration by the court  
28 if guardianship proceedings for the principal's person or estate are  
29 thereafter commenced. The court shall make its appointment in  
30 accordance with the principal's most recent nomination in a durable  
31 power of attorney or mental health advance directive except for good  
32 cause or disqualification.

33 (5) When a court imposes a full guardianship for an incapacitated  
34 person, the person shall be considered incompetent for purposes of  
35 rationally exercising the right to vote and shall lose the right to  
36 vote, unless the court specifically finds that the person is rationally  
37 capable of exercising the franchise. Imposition of a limited  
38 guardianship for an incapacitated person shall not result in the loss

1 of the right to vote unless the court determines that the person is  
2 incompetent for purposes of rationally exercising the franchise.

3 **Sec. 16.** RCW 11.88.030 and 1996 c 249 s 8 are each amended to read  
4 as follows:

5 (1) Any person or entity may petition for the appointment of a  
6 qualified person, trust company, national bank, or nonprofit  
7 corporation authorized in RCW 11.88.020 as the guardian or limited  
8 guardian of an incapacitated person. No liability for filing a  
9 petition for guardianship or limited guardianship shall attach to a  
10 petitioner acting in good faith and upon reasonable basis. A petition  
11 for guardianship or limited guardianship shall state:

12 (a) The name, age, residence, and post office address of the  
13 alleged incapacitated person;

14 (b) The nature of the alleged incapacity in accordance with RCW  
15 11.88.010;

16 (c) The approximate value and description of property, including  
17 any compensation, pension, insurance, or allowance, to which the  
18 alleged incapacitated person may be entitled;

19 (d) Whether there is, in any state, a guardian or limited guardian,  
20 or pending guardianship action for the person or estate of the alleged  
21 incapacitated person;

22 (e) The residence and post office address of the person whom  
23 petitioner asks to be appointed guardian or limited guardian;

24 (f) The names and addresses, and nature of the relationship, so far  
25 as known or can be reasonably ascertained, of the persons most closely  
26 related by blood or marriage to the alleged incapacitated person;

27 (g) The name and address of the person or facility having the care  
28 and custody of the alleged incapacitated person;

29 (h) The reason why the appointment of a guardian or limited  
30 guardian is sought and the interest of the petitioner in the  
31 appointment, and whether the appointment is sought as guardian or  
32 limited guardian of the person, the estate, or both;

33 (i) A description of any alternate arrangements previously made by  
34 the alleged incapacitated person, such as trusts, advance directives  
35 for mental health care, or powers of attorney, including identifying  
36 any guardianship nominations contained in a power of attorney, and why  
37 a guardianship is nevertheless necessary;

1 (j) The nature and degree of the alleged incapacity and the  
2 specific areas of protection and assistance requested and the  
3 limitation of rights requested to be included in the court's order of  
4 appointment;

5 (k) The requested term of the limited guardianship to be included  
6 in the court's order of appointment;

7 (l) Whether the petitioner is proposing a specific individual to  
8 act as guardian ad litem and, if so, the individual's knowledge of or  
9 relationship to any of the parties, and why the individual is proposed.

10 (2)(a) The attorney general may petition for the appointment of a  
11 guardian or limited guardian in any case in which there is cause to  
12 believe that a guardianship is necessary and no private party is able  
13 and willing to petition.

14 (b) Prepayment of a filing fee shall not be required in any  
15 guardianship or limited guardianship brought by the attorney general.  
16 Payment of the filing fee shall be ordered from the estate of the  
17 incapacitated person at the hearing on the merits of the petition,  
18 unless in the judgment of the court, such payment would impose a  
19 hardship upon the incapacitated person, in which case the filing shall  
20 be waived.

21 (3) No filing fee shall be charged by the court for filing either  
22 a petition for guardianship or a petition for limited guardianship if  
23 the petition alleges that the alleged incapacitated person has total  
24 assets of a value of less than three thousand dollars.

25 (4)(a) Notice that a guardianship proceeding has been commenced  
26 shall be personally served upon the alleged incapacitated person and  
27 the guardian ad litem along with a copy of the petition for appointment  
28 of a guardian. Such notice shall be served not more than five court  
29 days after the petition has been filed.

30 (b) Notice under this subsection shall include a clear and easily  
31 readable statement of the legal rights of the alleged incapacitated  
32 person that could be restricted or transferred to a guardian by a  
33 guardianship order as well as the right to counsel of choice and to a  
34 jury trial on the issue of incapacity. Such notice shall be in  
35 substantially the following form and shall be in capital letters,  
36 double-spaced, and in a type size not smaller than ten-point type:



1 Persons authorized to provide informed consent to health care on behalf  
2 of a patient who is not competent to consent shall be a member of one  
3 of the following classes of persons in the following order of priority:

4 (a) The appointed guardian of the patient, if any;

5 (b) The individual, if any, to whom the patient has given a durable  
6 power of attorney or mental health advance directive that encompasses  
7 the authority to make health care or mental health care decisions;

8 (c) The patient's spouse;

9 (d) Children of the patient who are at least eighteen years of age;

10 (e) Parents of the patient; and

11 (f) Adult brothers and sisters of the patient.

12 (2) If the physician seeking informed consent for proposed health  
13 care of the patient who is not competent to consent makes reasonable  
14 efforts to locate and secure authorization from a competent person in  
15 the first or succeeding class and finds no such person available,  
16 authorization may be given by any person in the next class in the order  
17 of descending priority. However, no person under this section may  
18 provide informed consent to health care:

19 (a) If a person of higher priority under this section has refused  
20 to give such authorization; or

21 (b) If there are two or more individuals in the same class and the  
22 decision is not unanimous among all available members of that class.

23 (3) Before any person authorized to provide informed consent on  
24 behalf of a patient not competent to consent exercises that authority,  
25 the person must first determine in good faith that that patient, if  
26 competent, would consent to the proposed health care. If such a  
27 determination cannot be made, the decision to consent to the proposed  
28 health care may be made only after determining that the proposed health  
29 care is in the patient's best interests.

30 NEW SECTION. **Sec. 18.** Nothing in this act creates a legal right  
31 or cause of action. Nothing in this act denies or alters any existing  
32 legal right or cause of action nor may it be relied upon to compel the  
33 establishment of any program or special entitlement.

34 NEW SECTION. **Sec. 19.** Sections 1 through 13 of this act  
35 constitute a new chapter in Title 71 RCW.

1        NEW SECTION.    **Sec. 20.**    If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 remainder of the act or the application of the provision to other  
4 persons or circumstances is not affected.

--- END ---